ANNUAL REPORT 2009

FAIR PRACTICES OFFICE

An independent office working to promote fair practices at the Workers' Compensation Board of Saskatchewan

TABLE OF CONTENTS

MESSAGE FROM THE FAIR PRACTICES OFFICER	1
OVERVIEW	2
COMPARATIVE STATISTICS	4
CASE SUMMARIES	6

MESSAGE FROM THE FAIR PRACTICES OFFICER

It is my privilege to present the 6th Annual Report of the Fair Practices Office for the year ending December 31, 2009.

More than six years have passed since I was appointed as the first Fair Practices Officer for the Saskatchewan Workers' Compensation Board. I continue to be amazed by how quickly each year passes. The complexity and variety of situations that we explore on a daily basis make this office one of the most interesting, challenging and rewarding places to work.

The Fair Practices Office (FPO) receives complaints and inquiries from injured workers and their families, employers and service providers. Listening to the complaint continues to be the first critical step in our process. It is only after you have listened to someone explain their situation that you can gain an understanding of how the situation may be resolved.

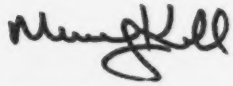
The role and mandate of the FPO was clarified by the Board with approval of Policy 05/2009 on September 17, 2009. The policy confirms that the FPO is to function as "an organizational Ombudsman's office addressing issues of service delivery raised by workers, employers and external service providers." The policy establishes the authority of the FPO and our standards of practice. The full policy is available on the WCB's corporate website, www.wcbsask.com.

The volume of complaints in 2009 dropped slightly from the record high number of 434 complaints received in 2008. Still, the 407 complaints received in 2009 was the second highest number in our six year history. Recommendations made by the FPO continue to receive positive and usually prompt responses by the WCB.

A new trend may have emerged this year with over 25 per cent of our complaints and inquiries falling into the "Information requests" category. This suggests that people are calling us before a situation worsens to learn about our process, their rights, responsibilities and options. By providing this information at an early stage in the claim, I am hopeful that any future problems can be avoided or at least addressed more quickly and effectively. It may also reflect better awareness of the FPO as an information resource and problem solving option.

Once again, I must express my appreciation to the many staff members at WCB who patiently receive my recommendations and provide timely and thoughtful responses. Your continued cooperation is critical to the ongoing success of the FPO.

Last, but not least, I must thank the Intake and Inquiry Officer who is the initial point of contact for all complaints received by the office. Her listening skills are finely tuned and she resolves many problems at the intake stage.



Murray Knoll
Fair Practices Officer

OVERVIEW

Establishment of the Office

The Fair Practices Office (FPO) was initially recommended by the James Dorsey Review (2000). Dorsey envisioned "the establishment of a Fair Practices Office that will assist our clients with disputes and complaints by steering them through the process to the right place. In addition, the FPO will investigate complaints and tabulate statistics that can point to the need for process and/or policy changes".

The 2001 Committee of Review of the WCB also referenced fairness. The Committee noted that *The Workers' Compensation Act, 1979*, (the Act) requires that "The Board shall: (a) treat workers and their dependents in a fair and reasonable manner". The Committee also supported the 2000 Dorsey recommendation to establish the FPO. In September, 2003, the FPO was officially established with the appointment of the first Fair Practices Officer. During its first six years, the FPO operated on the basis of a Mandate Statement provided by the Board. The role and mandate of the FPO was clarified and formalized with Board approval of Policy 05/2009 in September 2009. The complete policy is available in chapter 9.5 of the WCB Policy Manual.

Role and Mandate of the FPO

The FPO has a mandate to:

- Receive, investigate and resolve complaints about unfair practices in all areas of service delivery raised by workers, employers and external service providers; and
- Identify complaint trends, policy matters and systemic issues and make recommendations for improvements.

If an investigation determines that an unfair practice has occurred, the Fair Practices Officer seeks to resolve the issue at the most appropriate administrative level of the WCB. If an appropriate remedy is not implemented, the Fair Practices Officer raises the matter to senior WCB management, including the Chief Executive Officer. Unresolved issues are reported to the Board.

The Fair Practices Officer may on his or her own initiative, investigate, identify and make recommendations on systemic issues. Systemic issues are those that occur repeatedly and may affect the claims of several individuals.

Authority of the FPO

The FPO has the authority to investigate all areas of the WCB's service delivery including, but not limited to:

- Delays in adjudication, communication, referrals and payments;
- The conduct of WCB staff;
- Spoken and written communications;
- The implementation of appeal findings;
- Revenue and Employer accounts;
- Benefit payments; and,
- The wrong application of policy.

Complaints NOT Within the Authority of the FPO

The FPO does not have the authority to investigate complaints about:

- The conduct or a decision of the Board;
- Changes to the Act or its regulations;
- An issue outside of the jurisdiction of WCB (for example, a Labour Standards issue);
- An issue under appeal to the WCB's Appeal Department or the Board;
- An issue being handled by the Office of the Workers' Advocate, unless the Workers' Advocate asks that the FPO reviews the complaint;
- An alleged illegal or fraudulent act. These are referred to the investigative unit within the WCB's Internal Audit Department.

Reporting

The FPO reports directly to the Board through the Chairperson. The FPO reports on a quarterly basis, or more frequently as requested by the Board or the FPO.

The FPO publishes an independent annual report, outlining the activities of the office during the year. Statistics and case examples are provided to show the type of work the office performs on a daily basis.

2009 – Activities During the Year

- Made a presentation on the FPO at the WCB's Compensation Institute in Saskatoon.
- Attended the Annual Conference of the International Ombudsman Association.
- Attended the WCB's Annual General Meeting in Saskatoon and Regina.
- Attended the 30th Anniversary Conference for British Columbia Ombudsman office.
- Attended a workshop sponsored by the Forum of Canadian Ombudsman – Dealing with Unreasonable Complainant Behaviour
- Attended the regional meeting of the Northwest Ombudsman Group.
- Participated in quarterly teleconference meetings with the Fairness Working Group (made up of counterparts in other WCBs in British Columbia, Manitoba, Ontario, Newfoundland and Nova Scotia).
- Designed and published a new pamphlet for the FPO office that met the WCB corporate standards for clear language.

COMPARATIVE STATISTICS

for the calendar years 2005 through 2009

Number of Complaints / Inquiries Received

	2009	2008	2007	2006	2005
Complaints received	**407**	434	401	365	384
Re-opened	**25**	39	43	28	41
Total	**432**	473	444	393	425

Source of Complaints / Inquiries (%)

	2009	2008	2007	2006	2005
Injured Workers	**92.9**	83.6	90.1	91.0	94.5
Employers	**6.9**	10.4	6.2	8.0	3.9*
Other	**0.2**	6.0	3.7	1.0	1.6
Total	**100.0**	100.0	100.0	100.0	100.0

* This figure adjusted due to error in 2008 Annual Report

Category of Complaints / Inquiries

	2009*	2008*	2007	2006	2005
Disagree with decision	**275**	332	212	178	214
Information requests	**126**	120	73	74	58
Timeliness & process delays	**65**	76	55	66	76
Communications/Service issues	**55**	96	56	40	31
FPO issues (systemic)	**2**	1	2	3	3
Other	**0**	0	3	4	2
Total	**523**	625	401	365	384

* Commencing in 2008, two or more categories can be entered for each complaint that is registered. In prior years, only one category per complaint was entered.

Resolution (closed files)

	2009	2008	2007	2006	2005
Completed by FPO without referral	**276**	263	248	204	223
Called WCB for clarification	**30**	38	31	26	38
Referred to WCB for review	**101**	133	122	135	113
Total	**407**	434	401	365	384

Outcome of Referrals to WCB

	2009	2008	2007	2006	2005
Decision changed	**23**	18	13	17	15
New action taken	**74**	112	101	105	90
Reviewed – no change	**4**	3	8	13	8
Total	**101**	133	122	135	113

Response Time to Closed (%)

	2009	2008	2007	2006	2005
0-7 days	**75.2**	75.1	69.6	63.5	70.6
8-30 days	**16.0**	18.9	20.9	20.7	18.9
Over 30 days	**8.8**	6.0	9.5	15.8	10.5
Total	**100.0**	100.0	100.0	100.0	100.0

CASE SUMMARIES

The following case summaries are provided as examples of work completed by the Fair Practices Office. Names are not provided to protect the privacy of the individuals who brought these issues forward.

CASE SUMMARY 1 – Return to work plan interrupted

A worker called after his employer sent him home and told him not to return until he was fully recovered from his work injury. As a result, the worker was no longer receiving wages. His partial benefits from the WCB had also stopped, and he could not get satisfactory answers as to why from his case manager.

Our inquiry confirmed the worker had been making a good recovery from a back injury and had returned to his workplace as part of a gradual return to work plan. He was given alternate duties and reduced hours. He continued to receive physiotherapy treatments and his progress was monitored by his physiotherapist. Four weeks after his return to work, his back was jarred while operating a forklift and he was in pain. It was then the employer sent him home.

The physiotherapist reviewed the worker's condition and felt he was capable of resuming the return to work program, with the exception of operating the forklift. As this was only a small portion of his duties, it was felt his situation could be accommodated. The physiotherapist did expect some flare ups from time to time, but overall, it was considered safe for the worker to return to work.

From our perspective, there did not appear to be any reason why the return to work could not resume. There did appear to be poor communication between the various parties involved and the FPO asked the Team Leader to review the situation. The Team Leader asked the case manager to re-instate benefits and to arrange a meeting with the employer and the worker to develop a return to work plan. The worker subsequently reported that he got a note from his doctor confirming he was safe to return to work and the employer had accepted him back on that basis.

CASE SUMMARY 2 – Suspended due to delay in knee surgery

A worker complained that his benefits were suspended because his knee surgery was cancelled at the last minute. The anesthesiologist decided surgery would be too risky because the worker had developed pneumonia. The worker felt the suspension of benefits was unfair as he had done nothing wrong. His condition had since improved and he was again on the waiting list for knee surgery.

The FPO explained that the suspension policy does allow for benefits to continue for four weeks where an unrelated medical condition delays recovery from a work injury. The worker agreed that he had been given four weeks of benefits after the surgery was cancelled, but he was still on the waiting list for surgery and would soon be without funds. The FPO agreed to review his file.

The worker had also complained to the Team Leader responsible for his file. The Team Leader reviewed the file and agreed ongoing suspension was not appropriate. The suspension policy allows for benefits to be reinstated when the worker is "fit to resume treatment, attend appointments or resume an approved rehabilitation program following recovery from a non-compensable medical condition". The decision was reversed without any formal input from the FPO.

CASE SUMMARY 3 – Employer appeal

An employer representative approached the office with concerns about a recent Board decision to accept ongoing responsibility for a long-term claim for one of his client's employees. The employer's opinion was that the ongoing problems were due to a pre-existing condition and not the work injury. The FPO explained the appeal process to the representative and explained how the employer could obtain a copy of the worker's file to prepare for an appeal.

A review of this file by the FPO revealed that cost relief had previously been provided to this employer and 100 per cent of ongoing costs were being charged to the Second Injury Fund. Cost relief had been in effect for over two years, but the WCB had not sent any recent correspondence to the employer advising of this decision. The employer representative was new to this employer and was not aware that cost relief was in effect. Under the circumstances, the employer agreed that an appeal to the Board was unnecessary.

CASE SUMMARY 4 – Estimated earning capacity

When an injured worker achieves his maximum medical recovery from a work injury but remains unable to return to his previous employment, a situation can arise where the WCB estimates the worker as being capable of certain earnings. The amount of these estimated earnings is then deducted from his wage loss payments.

This situation may happen when the Vocational Rehabilitation Specialist (VRS) has assisted the worker, but the worker remains unemployed, or is uncooperative in vocational planning. The process is described in detail in section 4.1.1 of the WCB policy manual.

A worker contacted the FPO after his wage loss payments were reduced because of the deduction of estimated earnings. He did not believe this was fair as he had significant medical restrictions and had not been successful in obtaining employment within these restrictions.

A review of the worker's file showed the worker had missed several appointments with his VRS and his earnings had therefore been estimated, based upon employment that was available in his home community. The VRS had prepared a detailed report, outlining jobs that were available in the community and the wages for each of these positions. An average of these wages was used to determine the wage that the worker was considered capable of earning.

In reviewing the worker's file, the FPO noted the VRS's detailed report had not been given to the worker. The FPO suggested this information be provided to help the worker understand how the estimated earnings had been determined. The VRS report also contained the level of estimated earnings that were to be used for the next five years. Fairness required that this information be given to the worker so that he could see the basis for this decision and decide if he might wish to appeal.

The Team Leader agreed and the detailed VRS report was given to the worker. The worker did not agree with the level of estimated earnings, and indicated his intention to appeal the decision.

The FPO suggested that this detailed report should be provided to all workers when estimated earnings are applied to reduce wage loss. In response, the Director of Operations indicated that most of this information is normally provided to the worker in a detailed letter. The fact that this did not occur in this case was considered an exception. The Director did not believe it was necessary to provide the full report in all cases.

The FPO remains of the view that the full report should be provided to demonstrate openness and accountability. This issue will be monitored by the FPO during 2010 to determine if this case was truly exceptional or if the problem is more systemic.

CASE SUMMARY 5 – Wage base reduced after 26 weeks

Section 70(4) (b) of the Act says that average weekly earnings can be reviewed if they could be unfair because of the casual nature or terms of employment. The FPO usually only receives complaints when this wage base is reduced.

The worker complained when his daily rate of compensation was reduced from $54.08 to $29.68. This occurred after he had received benefits for 26 weeks, as outlined in section 4.1.4.4 of the WCB policy manual. The worker did not believe he could manage on this reduced rate and felt it was unfair.

In reviewing the file, it was clear the worker had been employed for less than two months when he was injured. His initial rate of compensation was calculated by averaging his total earnings for the time period during which he was employed. However, after 26 weeks, his wage base was reviewed. The wages he had earned in less than two months were averaged over the previous 12 months. The result was a reduced wage base.

The FPO reviewed the policy and agreed a review after 26 weeks was justified. However, the method used to establish the new wage did not comply with the policy, which states: *"Earnings for workers regularly employed in the same grade of employment in the same industry will be averaged over the 12 months immediately preceding the loss of earnings date, to establish a wage base".*

The FPO asked the Team Leader to review how the adjustment was made. A subsequent averaging of three comparable positions resulted in an increase in the daily wage rate to $61.79.

CASE SUMMARY 6 – Probable deductions

The concept of probable deductions is a difficult one to explain. Section 68(3) (b) (i) of the Act requires the WCB to determine *"the probable income tax payable by the worker.... as at the date of the worker's injury and each anniversary date...."*. To do so, the WCB must consider any income tax exemptions which the worker may have for dependents, both at the date of injury and on each anniversary date of the injury.

A worker complained that the WCB was not prepared to accept his children as dependents in the annual review of his compensation. The worker did not have a claim for the dependent children during the previous tax year because he then lived in Alberta and that province does not have an exemption for dependent children. The worker had returned to Saskatchewan and as of the date of the review, both the worker and his accountant indicated the worker would claim an exemption for the children in the 2009 tax year. The case manager was not prepared to grant the exemption because the worker's 2008 income tax return did not include it.

The FPO reviewed the case with the Team Leader. The legislation refers to the probable income tax payable at date of injury and each anniversary date. There is no reference to the most recent income tax return, although this may be helpful for verification purposes. The Team Leader agreed that based upon a strict reading of the legislation the worker should be allowed the exemption for the dependent children. The wage base was adjusted and will be subject to review again on the next anniversary date.

CASE SUMMARY 7 – Systemic changes

The FPO is always looking for ways for the WCB to improve service to its clients. During the past six years, we have received over 2400 concerns. If recurring problems are detected, they are brought forward for a review and possible solution. One example in 2009 related to claim information available to workers by way of the internet.

Workers may set up an online account with the WCB that gives them access to specific payment information about their claim. This access eliminates the need to call the case manager to determine if a specific payment has been made, or when it may be expected. It is a valuable tool and an increasing number of workers are taking advantage of it.

Several workers contacted the FPO concerning information they had been able to access about their claim. In some instances, the FPO review of the file found that some of the information was incomplete or inaccurate. Although the FPO has access to all WCB file information, the office is unable to view the same screens that injured workers view through their online account. This made communication difficult.

The FPO followed up by meeting with the WCB's Information Technology (IT) Department to alert them to worker concerns. The IT Department was in the process of making improvements to the system that allows workers to view their accounts, but was not familiar with the specific types of problems discovered by the FPO. IT agreed to investigate these concerns and if necessary, seek solutions.

Several weeks later, the IT Department met with the FPO to advise of the results of their review. They confirmed the problems we had noted and solutions were being implemented, as part of their overall review of the system. The changes have now been incorporated and the FPO inquiries in this area have decreased.

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